

Introduced by Senator Ashburn

February 23, 2007

An act to amend Sections 1338.5 and 1417.2 of the Health and Safety Code, and to amend Section 14126.023 of the Welfare and Institutions Code, relating to nurse assistant certification costs.

LEGISLATIVE COUNSEL'S DIGEST

SB 691, as introduced, Ashburn. Nurse assistants.

(1) Existing law requires a criminal record clearance to be conducted for all nurse assistants by the submission of fingerprint cards to the State Department of Health Services for processing at the Department of Justice, and requires completion of the criminal record clearance prior to issuance or renewal of a certificate. Existing law provides that the fee to cover the processing costs of the Department of Justice shall not exceed a specified amount. Effective July 1, 2007, these duties of the State Department of Health Services will be transferred to the State Department of Public Health.

Existing law requires each health facility that operates and is used as a clinical skills site for certification training, and each health facility, prior to hiring a nurse assistant applicant certified in another state or country, to arrange for and pay the cost of the fingerprint live-scan service and the Department of Justice processing costs for each applicant. Existing law prohibits health facilities from passing these costs through to nurse assistant applicants unless allowed by federal law.

This bill would authorize a health facility that operates, and is used as a clinical skills site for certification training, to deduct from the total amount of its annual licensure fee the total amount of the incurred costs that the health facility actually pays in the prior year, as specified.

(2) Existing law establishes the Health Facilities Citation Penalties Account, the funds in which are available, upon appropriation by the Legislature, to the department to be used for the protection of health or property of residents of long-term health care facilities, as specified.

This bill would also authorize these funds to be used to reimburse the department for any decrease in funds available to the department's Licensing and Certification Division caused by the annual license fee deduction authorized by this bill.

(3) Existing law, the Medi-Cal Long-Term Reimbursement Act, requires the department until July 1, 2008, to implement a cost-based reimbursement rate methodology for free standing nursing facilities. The act requires the department to seek approval of a Medicaid state plan amendment specifically outlining the reimbursement methodology developed pursuant to these provisions. The act also provides that it shall remain operative only as long as specified skilled nursing facility quality assurance fee provisions continue, as approved by the federal Centers for Medicare and Medicaid Services, and federal financial participation for the methodology implemented under these provisions continues. The rate methodology established pursuant to these provisions would cease to be implemented on and after July 31, 2008.

This bill would prohibit the department from including the deduction that would be authorized by this bill from the department's reimbursement rate methodology for the costs of a facility's annual license fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1338.5 of the Health and Safety Code is
2 amended to read:
3 1338.5. (a) (1) (A) A criminal record clearance shall be
4 conducted for all nurse assistants by the submission of fingerprint
5 images and related information to the state department for
6 processing at the Department of Justice. The licensing and
7 certification program shall issue an All Facilities Letter (AFL) to
8 facility licensees when both of the following criteria are met:
9 (i) The program receives, within three business days, 95 percent
10 of its total responses indicating no evidence of recorded criminal
11 information from the Department of Justice.

1 (ii) The program processes 95 percent of its total responses
2 requiring disqualification in accordance with paragraph (2) of
3 subdivision (C) of Section 1337.9, no later than 45 days after the
4 date that the report is received from the Department of Justice.

5 (B) After the AFL is issued, licensees shall not allow nurse
6 assistant trainees or newly hired nurse assistants to have direct
7 contact with clients or residents of the facility prior to completion
8 of the criminal record clearance. A criminal record clearance shall
9 be complete when the department has obtained the person's
10 criminal offender record information search response information
11 from the Department of Justice and has determined that the person
12 is not disqualified from engaging in the activity for which clearance
13 is required. Notwithstanding any other provision of law, the
14 department may, without taking regulatory action pursuant to
15 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
16 3 of Title 2 of the Government Code, implement, interpret, or make
17 specific this paragraph by means of an AFL or similar instruction.
18 The fee to cover the processing costs of the Department of Justice,
19 not including the costs associated with capturing or transmitting
20 the fingerprint images and related information, shall not exceed
21 thirty-two dollars (\$32) per submission.

22 (C) An applicant or certificate holder who may be disqualified
23 on the basis of a criminal conviction shall provide the department
24 with a certified copy of the judgment of each conviction. In
25 addition, the individual may, during a period of two years after
26 the department receives the criminal record report, provide the
27 department with evidence of good character and rehabilitation in
28 accordance with subdivision (d) of Section 1337.9. Upon receipt
29 of a new application for certification of the individual, the
30 department may receive and consider the evidence during the
31 two-year period without requiring additional fingerprint imaging
32 to clear the individual.

33 (D) The department's Licensing and Certification Program shall
34 explore and implement methods for maximizing its efficiency in
35 processing criminal record clearances within the requirements of
36 law, including a streamlined clearance process for persons who
37 have been disqualified on the basis of criminal convictions that do
38 not require automatic denial pursuant to paragraph (2) of
39 subdivision (a) of Section 1337.9.

(2) (A) Upon enrollment in a training program for nurse assistant certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application and the fingerprint cards to the state department to receive a criminal record review through the Department of Justice. Submission of the fingerprints to the Federal Bureau of Investigation shall be at the discretion of the state department.

(B) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior administrative action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

(3) Each health facility that operates and is used as a clinical skills site for certification training, and each health facility, prior to hiring a nurse assistant applicant certified in another state or country, shall arrange for and pay the cost of the fingerprint live-scan service and the Department of Justice processing costs for each applicant. ~~Health facilities~~ *A health facility may not pass these costs through to nurse assistant applicants unless allowed by federal law enacted subsequent to the effective date of this paragraph July 12, 2006. A health facility that operates and is used as a clinical skills site for certification training may keep a record of the fingerprint live-scan service and the Department of Justice processing costs that it incurs on and after August 1, 2006. The health facility may then provide a copy of the record to the State Department of Public Health. Notwithstanding Section 1266, the department shall deduct that amount from the total amount of the*

1 *annual licensure fee that the department assesses the health facility*
2 *pursuant to that section the total amount of the incurred costs that*
3 *the health facility actually paid in the prior year, except that the*
4 *costs paid in 2007 shall also include the costs paid in 2006 for*
5 *costs incurred between August 1, 2006, and December 31, 2006,*
6 *inclusive.*

7 (b) The use of fingerprint live-scan technology implemented
8 by the Department of Justice by the year 1999 shall be used by the
9 Department of Justice to generate timely and accurate positive
10 fingerprint identification prior to nurse assistant certification and
11 prior to direct contact with residents by the nurse assistant
12 applicant. The department shall explore options to work with
13 private and governmental agencies to ensure that licensees have
14 adequate access to electronic transmission sites, including requiring
15 the department to maintain a contract for electronic transmission
16 services in each of the district offices where facilities have
17 indicated problems with timely access to electronic transmission
18 sites or consistent delays of more than three business days in
19 obtaining appointments for electronic transmission services through
20 a private entity, government agency, or law enforcement agency.

21 (c) The state department shall develop procedures to ensure that
22 any licensee, direct care staff, or certificate holder for whom a
23 criminal record has been obtained pursuant to this section or
24 Section 1265.5 or 1736 shall not be required to obtain multiple
25 criminal record clearances.

26 (d) If the department is experiencing a delay in processing the
27 renewal of the certified nursing assistant's certification at the time
28 of the expiration of the certified nursing assistant's certification,
29 the department may extend the expiration of the certified nursing
30 assistant's certification for six months.

31 (e) If, at any time, the department determines that it does not
32 meet the standards specified in clauses (i) and (ii) of subparagraph
33 (A) of paragraph (1) of subdivision (a), for a period of 90
34 consecutive days, the requirements in paragraph (1) of subdivision
35 (a) shall be inoperative until the department can demonstrate it has
36 met those standards for a period of 90 consecutive days.

37 (f) During any time in which the requirements of paragraph (1)
38 of subdivision (a) are inoperative, facilities may allow newly hired
39 nurse assistants to have direct contact with clients or residents of
40 the facility after those persons have submitted livescan fingerprint

1 images to the Department of Justice, and the department shall issue
2 an AFL advising facilities of this change in the statutory
3 requirements.

4 (g) Notwithstanding any other provision of law, the department
5 is authorized to provide an individual with a copy of his or her
6 state or federal level criminal offender record information search
7 response as provided to that department by the Department of
8 Justice if the department has denied a criminal background
9 clearance based on this information and the individual makes a
10 written request to the department for a copy specifying an address
11 to which it is to be sent. The state or federal level criminal offender
12 record information search response shall not be modified or altered
13 from its form or content as provided by the Department of Justice
14 and shall be provided to the address specified by the individual in
15 their written request. The department shall retain a copy of the
16 individual's written request and the response and date provided.

17 SEC. 2. Section 1417.2 of the Health and Safety Code is
18 amended to read:

19 1417.2. (a) Notwithstanding Section 1428, moneys collected
20 as a result of civil penalties imposed under this chapter shall be
21 deposited into an account which is hereby established in the Special
22 Deposit Fund under the provisions of Section 16370 of the
23 Government Code. This account is titled the Health Facilities
24 Citation Penalties Account and shall, upon appropriation by the
25 Legislature, be used *to reimburse the department for any decrease*
26 *in funds available to the department's Licensing and Certification*
27 *Division caused by the annual license fee deduction authorized by*
28 *subdivision (a) of Section 1338.5, and for the protection of health*
29 *or property of residents of long-term health care facilities,*
30 *including, but not limited to, the following:*

31 (1) Relocation expenses incurred by the state department, in the
32 event of a facility closure.

33 (2) Maintenance of facility operation pending correction of
34 deficiencies or closure, such as temporary management or
35 receivership, in the event that the revenues of the facility are
36 insufficient.

37 (3) Reimbursing residents for personal funds lost. In the event
38 that the loss is a result of the actions of a long-term health care
39 facility or its employees, the revenues of the facility shall first be
40 used.

(4) The costs associated with informational meetings required under Section 1327.2.

(b) Notwithstanding subdivision (a), the balance in the Health Facilities Citation Penalties Account shall not, at any time, exceed ten million dollars (\$10,000,000).

SEC. 3. Section 14126.023 of the Welfare and Institutions Code is amended to read:

14126.023. (a) The methodology developed pursuant to this article shall be facility specific and reflect the sum of the projected cost of each cost category and passthrough costs, as follows:

(1) Labor costs limited as specified in subdivision (c).

(2) Indirect care nonlabor costs limited to the 75th percentile.

(3) Administrative costs limited to the 50th percentile.

(4) Capital costs based on a fair rental value system (FRVS) limited as specified in subdivision (d).

(5) Direct passthrough of proportional Medi-Cal costs for property taxes, facility license fees, new state and federal mandates, caregiver training costs, and liability insurance projected on the prior year's costs. *In determining facility license fees for purposes of this section, the department shall, to the extent consistent with federal law, not adjust these fees by any deductions for costs authorized pursuant to subdivision (a) of Section 1338.5 of the Health and Safety Code.*

(b) The percentiles in paragraphs (1) through (3) of subdivision (a) shall be based on annualized costs divided by total resident days and computed on a specific geographic peer group basis. Costs within a specific cost category shall not be shifted to any other cost category.

(c) The labor costs category shall be comprised of a direct resident care labor cost category, an indirect care labor cost category, and a labor-driven operating allocation cost category, as follows:

(1) Direct resident care labor cost category which shall include all labor costs related to routine nursing services including all nursing, social services, activities, and other direct care personnel. These costs shall be limited to the 90th percentile.

(2) Indirect care labor cost category which shall include all labor costs related to staff supporting the delivery of patient care including, but not limited to, housekeeping, laundry and linen,

1 dietary, medical records, inservice education, and plant operations
2 and maintenance. These costs shall be limited to the 90th percentile.

3 (3) Labor-driven operating allocation shall include an amount
4 equal to 8 percent of labor costs, minus expenditures for temporary
5 staffing, which may be used to cover allowable Medi-Cal
6 expenditures. In no instance shall the operating allocation exceed
7 5 percent of the facility's total Medi-Cal reimbursement rate.

8 (d) The capital cost category shall be based on a FRVS that
9 recognizes the value of the capital related assets necessary to care
10 for Medi-Cal residents. The capital cost category includes mortgage
11 principal and interest, leases, leasehold improvements, depreciation
12 of real property, equipment, and other capital related expenses.
13 The FRVS methodology shall be based on the formula developed
14 by the department that assesses facility value based on age and
15 condition and uses a recognized market interest factor. Capital
16 investment and improvement expenditures included in the FRVS
17 formula shall be documented in cost reports or supplemental reports
18 required by the department. The capital costs based on FRVS shall
19 be limited as follows:

20 (1) For the 2005–06 rate year, the capital cost category for all
21 facilities in the aggregate shall not exceed the department's
22 estimated value for this cost category for the 2004–05 rate year.

23 (2) For the 2006–07 rate year and subsequent rate years, the
24 maximum annual increase for the capital cost category for all
25 facilities in the aggregate shall not exceed 8 percent of the prior
26 rate year's FRVS cost component.

27 (3) If the total capital costs for all facilities in the aggregate for
28 the 2005–06 rate year exceeds the value of the capital costs for all
29 facilities in the aggregate for the 2004–05 rate year, or if that capital
30 cost category for all facilities in the aggregate for the 2006–07 rate
31 year or any rate year thereafter exceeds 8 percent of the prior rate
32 year's value, the department shall reduce the capital cost category
33 for all facilities in equal proportion in order to comply with
34 paragraphs (1) and (2).

35 (e) For the 2005–06 and 2006–07 rate years, the facility specific
36 Medi-Cal reimbursement rate calculated under this article shall
37 not be less than the Medi-Cal rate that the specific facility would
38 have received under the rate methodology in effect as of July 31,
39 2005, plus Medi-Cal's projected proportional costs for new state

1 or federal mandates for rate years 2005–06 and 2006–07,
2 respectively.

3 (f) The department shall update each facility specific rate
4 calculated under this methodology annually. The update process
5 shall be prescribed in the Medicaid state plan, regulations, and the
6 provider bulletins or similar instructions described in Section
7 14126.027, and shall be adjusted in accordance with the results of
8 facility specific audit and review findings in accordance with
9 subdivisions (h) and (i).

10 (g) The department shall establish rates pursuant to this article
11 on the basis of facility cost data reported in the integrated long-term
12 care disclosure and Medi-Cal cost report required by Section
13 128730 of the Health and Safety Code for the most recent reporting
14 period available, and cost data reported in other facility financial
15 disclosure reports or supplemental information required by the
16 department in order to implement this article.

17 (h) The department shall conduct financial audits of facility and
18 home office cost data as follows:

19 (1) The department shall audit facilities a minimum of once
20 every three years to ensure accuracy of reported costs.

21 (2) It is the intent of the Legislature that the department develop
22 and implement limited scope audits of key cost centers or
23 categories to assure that the rate paid in the years between each
24 full scope audit required in paragraph (1) accurately reflects actual
25 costs.

26 (3) For purposes of updating facility specific rates, the
27 department shall adjust or reclassify costs reported consistent with
28 applicable requirements of the Medicaid state plan as required by
29 Part 413 (commencing with Section 413.1) of Title 42 of the Code
30 of Federal Regulations.

31 (4) Overpayments to any facility shall be recovered in a manner
32 consistent with applicable recovery procedures and requirements
33 of state and federal laws and regulations.

34 (i) (1) On an annual basis, the department shall use the results
35 of audits performed pursuant to subdivision (h), the results of any
36 federal audits, and facility cost reports, including supplemental
37 reports of actual costs incurred in specific cost centers or categories
38 as required by the department, to determine any difference between
39 reported costs used to calculate a facility's rate and audited facility
40 expenditures in the rate year.

1 (2) If the department determines that there is a difference
2 between reported costs and audited facility expenditures pursuant
3 to paragraph (1), the department shall adjust a facility's
4 reimbursement prospectively over the intervening years between
5 audits by an amount that reflects the difference, consistent with
6 the methodology specified in this article.

7 (j) For nursing facilities that obtain an audit appeal decision that
8 results in revision of the facility's allowable costs, the facility shall
9 be entitled to seek a retroactive adjustment in its facility specific
10 reimbursement rate.

11 (k) Compliance by each facility with state laws and regulations
12 regarding staffing levels shall be documented annually either
13 through facility cost reports, including supplemental reports, or
14 through the annual licensing inspection process specified in Section
15 1422 of the Health and Safety Code.